

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Application of)
)
CITY OF CRYSTAL LAKE, ILLINOIS) FCC File No. 0000858635
)
For Private Operational Fixed Service Microwave)
Facility On 2476 MHz, Crystal Lake, Illinois)

ORDER

Adopted: February 20, 2003

Released: February 21, 2003

By the Deputy Chief, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* On August 9, 2002, the City of Crystal Lake, Illinois (Crystal Lake), filed a Petition for Reconsideration (Petition)¹ of the June 13, 2002, action by the Licensing and Technical Analysis Branch (Branch) of the Public Safety and Private Wireless Division, denying a Request for Waiver (Waiver Request)² associated with the above-captioned application.³ For the reasons set forth below, we dismiss the Petition as untimely.

2. *Background.* On April 15, 2002 the City of Crystal Lake filed a new application for a point-to-point microwave link using the frequency 2476 MHz with emission designator 8M0F3W to transmit a video signal containing the surveillance images of a short bike path. In this connection, Crystal Lake requested waiver of Sections 101.147(f)(3), 101.109(c), and 101.115 of the Commission's Rules⁴ to allow the operation of a video system in the 2450 MHz band with a bandwidth of 8 MHz.

3. On June 13, 2002, the Branch concluded that Crystal Lake had not shown that a rule waiver was justified to allow a bandwidth of 8 MHz in a band where the normal bandwidth is 625 kHz and up to 2.5 MHz with adequate justification.⁵ In this connection, the Branch concluded that the Waiver Request failed to demonstrate that the rules, as applied in this particular case, were unduly burdensome or that Crystal Lake did not have a reasonable alternative.⁶ Although authorized to dismiss the above-captioned application as defective, the Branch returned it to give Crystal Lake an opportunity to find a new frequency (that would not need a waiver) and to resubmit a corrected application within sixty days. On August 9, 2002, Crystal Lake filed the instant Petition for Reconsideration of the Branch's June 13,

¹ Petition for Reconsideration filed by City of Crystal Lake, Illinois, Public Safety Division, Police Department on Aug. 9, 2002, FCC File No. 0000858635.

² See FCC File No. 0000858635 (filed on April 15, 2002; City of Crystal Lake Request for Waiver (filed April 15, 2002, as amended). The Waiver Request was attached as an exhibit to the application.

³ See FCC File No. 0000858635, Automated Letter Information Ref. No. 1458336 (June 13, 2002) (*Branch Letter*).

⁴ 47 C.F.R. §§ 101.147(f)(3), 101.109(c), 101.115.

⁵ See *Branch Letter* citing 47 C.F.R. § 101.147(f).

⁶ See 47 C.F.R. § 1.925.

2002 action denying the Waiver Request. Thereafter, on November 22, 2002, WGBO License Partnership, G.P. (WGBO), filed a Petition to Deny the above-captioned application (Petition to Deny).⁷

4. *Discussion.* Section 405 of the Communications Act, as amended, sets forth the requirements that a petitioner must satisfy before we may consider the petitioner's pleadings on reconsideration.⁸ Section 405, as implemented by Section 1.106(f) of the Commission's Rules, requires a petition for reconsideration to be filed within thirty days from the date of public notice the Commission's action.⁹ In addition, Section 1.106(i) of the Commission's Rules provides that a petition for reconsideration must be submitted to the Secretary, Federal Communications Commission, Washington, D.C. 20554.¹⁰

5. In this case, the date of public notice of the denial of the Waiver Request was June 13, 2002, the date of the Branch Letter.¹¹ The deadline for filing petitions for reconsideration of that action was July 15, 2002.¹² The Office of the Secretary did not receive Crystal Lake's Petition until August 9, 2002. Therefore, we find that the Petition was filed untimely. The filing requirement of Section 405(a) of the Act applies even if the petition for reconsideration is filed only one day late.¹³ Consequently, we conclude that the Petition must be dismissed as untimely. In view of our action herein, and because the Branch's denial of the Waiver Request rendered the above-captioned application defective and subject to dismissal,¹⁴ we find the Petition to Deny to be moot.

6. Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, that the Petition for Reconsideration filed by the City of Crystal Lake, Illinois, IS DISMISSED. The Licensing and Technical Analysis Branch SHALL PROCESS the above-captioned application in accordance with the Commission's Rules and the instant Order.

7. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Peter J. Daronco
Deputy Chief, Policy and Rules Branch
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau

⁷ Petition to Deny filed by WGBO License Partnership, G.P. (WGBO), on Nov. 22, 2002. filed a Petition to Deny the above-captioned application. WGBO alleges that Crystal Lake's application was not properly coordinated and that the proposed transmitter would be inside the 104.6 km. (65 mi.) protected contour of its TV Remote Pickup Station KC-26254.

⁸ 47 U.S.C. § 405.

⁹ 47 U.S.C. § 405; 47 C.F.R. § 1.106(f).

¹⁰ 47 C.F.R. § 1.106(i).

¹¹ See 47 C.F.R. § 1.4(b)(5).

¹² The thirtieth day after June 13, 2002, was July 13, 2002, which was a Saturday. Since that day was a holiday, petitions for reconsideration were due on the next business day, Monday, July 15, 2002. See 47 C.F.R. § 1.4(h).

¹³ See, e.g., Panola Broadcasting Co., *Memorandum Opinion and Order*, 68 FCC 2d 533 (1978); Metromedia, Inc., *Memorandum Opinion and Order*, 56 FCC 2d 909, 909-10 (1975).

¹⁴ See 47 C.F.R. §§ 1.925(c)(ii), 1.934(d)(2).